

Sprint Spectrum L.P. d/b/a Sprint PCS ("Sprint PCS") hereby comments on the Commission's Second Further Notice of Proposed Rulemaking ("*Notice*") in the above-captioned proceeding. PCS licensees have already paid for Gulf coverage, and the Commission has previously addressed the issue of PCS service in the Gulf of Mexico (the "Gulf"). A review of the current legal and regulatory framework reveals that the existing MTA boundaries of licensees bordering the Gulf are sufficiently broad to ensure PCS coverage in the Gulf pursuant to the definition of MTAs and state law. Additionally, and just as importantly, in earlier proceedings, the Commission (a) decided to allocate the entirety of U.S. service areas to current MTA and BTA licensees and (b) explicitly recognized the right of PCS licensees of the MTA bordering the Gulf to meet the Gulf's service needs. Sprint PCS has relied on those decisions and strongly supports them.

Given that PCS licensees already paid for Gulf coverage, the Commission's previous decisions and the expansive nature of existing MTA boundaries, it would be an unlawful taking of PCS licensees' property, an improper denial of PCS licensees' legitimate reliance on past FCC decisions, and a waste of administrative resources for the Commission to relicense the Gulf.

I. PCS MTA Licensees Are Entitled to Serve the Gulf Under State Law and the Existing Regulatory Framework.

FCC regulations establish that MTA borders are consistent with local county borders as drawn by State law. The Commission's rules adopt the MTA definitions set forth in the *Rand McNally 1992 Commercial Atlas & Marketing Guide*, 123rd Edition (the "*Rand McNally Atlas*").^{1/} The *Rand McNally Atlas* states that "the Trading Area boundaries have been drawn on a *county-line basis*. . . ."^{2/} The *Rand McNally Atlas* defines "county" as "the primary political subdivision of every state"^{3/} Thus, MTAs are based on "county lines" which are drawn by state law. For example, under Texas law, county lines extend three marine leagues into the Gulf from the low-tide coastline.^{4/} Both the Commission and the U.S. Supreme Court have held

^{1/} See 47 C.F.R. § 24.202(a).

^{2/} *Rand McNally Atlas* at 39 (emphasis added).

^{3/} *Id.*

^{4/} See Tex.Nat.Res. § 11.013(a).

that the three marine league line extends nine nautical miles from the low tide coastline.^{5/} The gulfward boundary for Louisiana also extends three marine leagues into the Gulf.^{6/} Similarly, the state of Florida has been held to extend nine nautical miles from the Gulf coastline.^{7/} MTAs on the Texas, Louisiana and Florida coasts therefore extend at least nine nautical miles into the Gulf and encompass the water areas therein, if not all Gulf areas under U.S. jurisdiction. Thus, the existing MTA boundaries allow PCS coverage in the Gulf which PCS carriers paid for in the auctions.

The analysis in the cellular context is different because cellular service areas do not follow state county lines. Instead, cellular MSAs are based on population centers defined by the United States Census Bureau, and the Census Bureau explicitly did not include water areas within its MSAs.^{8/} Therefore, separate licensing of water areas was necessary for cellular service. In contrast, MTAs always encompassed Gulf water areas.

Moreover, by continuing to allow existing licensees of neighboring MTAs to provide PCS service to the Gulf, the Commission will avoid the type of disputes which

^{5/} See *Texas v. Louisiana*, 410 U.S. 702 (1973); *In re Petroleum Comms., Inc.*, 3 FCC Rcd. 399 (1988). The "coastline" is the shoreline plus inland waters, including bays, historic inland waters, and waters circumscribed by a fringe of islands within the immediate vicinity of the shore line. *In re Petroleum Comms., Inc. et al.*, 1 FCC Rcd. 511 (1986).

^{6/} See LA. Rev. Stat. Ann. § 49:1.

^{7/} See *State of Florida v. Efthimiadis*, 690 So.2d. 1320 (Fla. Dist.Ct. App. 1997).

^{8/} See *In re Petroleum Comms.*, 3 FCC Rcd. 399 at ¶ 5 ("The Commission adopted, without modification, the Census Bureau policy of excluding water areas from consideration with MSA areas.")

have arisen in the cellular context as a result of having different carriers service the surrounding land and water areas of the Gulf. As mentioned in the *Notice*, disputes have occurred between water-based and land-based cellular carriers as water-based carriers have attempted to place transmitters on land without obtaining prior consent from land-based carriers and as both groups have struggled to manage harmful interference. Such conflicts could and should be avoided in the PCS context by allowing existing licensees in bordering MTAs to serve the Gulf as opposed to creating a second set of licensees exclusively for water area service.

II. The Commission Has Previously Determined That PCS Licensees of MTAs Bordering the Gulf Will Provide Service in the Gulf Water Areas.

The Commission's initial licensing of PCS constituted the exclusive licensing of that service for the entire United States, thus PCS licensees are entitled to serve all Gulf areas under U.S. jurisdiction.^{9/} By the time the Commission began licensing PCS, it had licensed cellular and was therefore privy to the wisdom resulting from that process. Due to the lessons it learned with cellular, the Commission decided to license PCS differently from the cellular model. One important difference involved service areas. Learning from its experience with cellular, the Commission decided that unlike cellular, which was licensed in Metropolitan Statistical Areas ("MSAs"), PCS should have larger, more expansive service areas. The Commission stated that it rejected

^{9/} See *Amendment to the Commission's Rules to Establish New Personal Communications Services*, 8 FCC Rcd 7700 (1993).

the use of cellular MSA boundaries with PCS because the "ten year history of the cellular industry provide[d] evidence generally that these service areas have been *too small* for the efficient provision of regional or nationwide mobile service."^{10/} The Commission went on to explain that rather than forcing the replication of cellular service areas, it would initiate PCS with "*larger service areas*."^{11/}

Armed with the experience of cellular's small-scale licensing, the Commission's adoption of broader, more expansive PCS service areas was intended to blanket the entire United States. Consistent with the size differential between PCS and cellular service areas, the Commission determined that, unlike in the cellular context, it was unnecessary to have separate licensees for the Gulf.

The Commission's intent to license the entirety of U.S. service areas to current MTA and BTA licensees was evidenced by a subsequent proceeding. Notwithstanding the *Notice*'s erroneous comment that "no provision has been made for the licensing of broadband or narrowband PCS in the Gulf," the Commission has in fact squarely addressed this issue.^{12/} The Commission has previously indicated that PCS licensees of the MTAs bordering the Gulf are responsible for providing service to the Gulf, recognizing the creation of all-encompassing PCS service areas.

^{10/} See *Amendment of the Commission's Rules to Establish New Personal Communications Services*, 9 FCC Rcd 4957 (1994)(emphasis added).

^{11/} *Id.* at 76 (emphasis added).

^{12/} *Notice* at ¶ 59.

In addressing the status of a microwave incumbent's proposed system modification in the Gulf, the Commission determined that the proposed modification was entitled to primary status until a PCS licensee needed the incumbent's frequency.^{13/} After noting that "there is no PCS licensee for the water areas of the Gulf of Mexico," the Commission stated that "[e]ntities eligible to serve the Gulf of Mexico are the licensees of the BTAs bordering the Gulf."^{14/} The Commission further confirmed this conclusion by stating that "Mobil's existing system . . . must continue *until a PCS licensee needs the frequency*."^{15/} This statement evidences the Commission's belief that the existing MTA licensees are responsible for serving the Gulf. Thus, the Commission has explicitly decided to allow PCS licensees of the MTAs bordering the Gulf to meet the Gulf's service needs. This earlier decision is consistent with the Commission's intent to have MTA and BTA licensees provide service for the entire United States, including water areas such as the Gulf. Not only have PCS carriers relied upon the Commission's intent to license the entirety of the U.S. service area in the bidding process, but they have also relied upon this intent and the Commission's earlier decision in designing their networks.

^{13/} *Applications of Mobil Oil Telecom, Ltd., for Private Operational-Fixed Microwave Service Stations WNTG 997 and WNTZ 385 at Mobile Bay Block 869 in the Gulf of Mexico*, 11 FCC Rcd. 4115 (1996).

^{14/} *Id.* at n.10.

^{15/} *Id.* at ¶ 11.

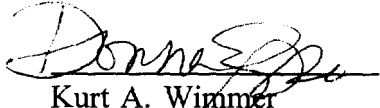
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The Commission's initial PCS licensing covered the entire United States, including the Gulf. PCS carriers paid for that coverage. The Commission has recognized the broad reach of MTA licensees bordering the Gulf in a subsequent proceeding. The Commission should adhere to its previous decision to allow PCS licensees of bordering MTAs serve the Gulf. Therefore because existing PCS service areas already cover the Gulf area and are sufficient to meet the Gulf's needs, it is unnecessary for the Commission to, and the Commission should not, consider alternative provisions to serve the Gulf in the instant proceeding.

Respectfully submitted,

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